

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

KELLI GRAY and all others
similarly situated,

NO. CV-09-251-EFS

Plaintiffs,

V.

SUTTELL & ASSOCIATES; MIDLAND FUNDING, LLC; MARK T. CASE and JANE DOE CASE, husband and wife; and KAREN HAMMER and JOHN DOE HAMMER.

**ORDER GRANTING MOTION TO
RECONSIDER AND/OR CLARIFY
RULING CONCERNING NET WORTH
DISCOVERY**

Defendants.

EVA LAUBER, DANE SCOTT, SCOTT
BOOLEN, JOEL FINCH, and all
others similarly situated,

Plaintiffs,

V.

ENCORE CAPITAL GROUP, INC.;
MIDLAND FUNDING, LLC; MIDLAND
CREDIT MANAGEMENT, INC.; SUTTELL
& HAMMER, PS.; MARK T. CASE and
JANE DOE CASE, husband and wife;
MALISA L. GURULE and JOHN DOE
GURULE; KAREN HAMMER and ISAAC
HAMMER, wife and husband;
WILLIAM SUTTELL and JANE DOE
SUTTELL, husband and wife;

Defendants.

Before the Court, without oral argument, is Defendants Suttell & Associates, P.S., Mark T. Case, Jane Doe Case, Karen Hammer, and Jane Doe

1 Hammer's ("Gray-Suttell Defendants") Motion to Reconsider and/or Clarify
 2 Ruling Concerning Net Worth Discovery (ECF No. [213](#)). The Gray-Suttell
 3 Defendants move the Court for an order reconsidering or clarifying its
 4 February 10, 2011 Order Granting and Denying in Part Plaintiff's Motions
 5 to Compel and Setting Status Conference (ECF No. [205](#)), which required the
 6 Gray-Suttell Defendants to provide net worth information:

7 Plaintiff asks the Court to compel responses to the First
 8 Set of Interrogatories, which sought net worth information from
 Suttell and from Mr. Case, Ms. Hammer, and their spouses. . . .

9 The Court finds this information is relevant to the issue
 10 of statutory damages. See 15 U.S.C. § 1692ka(2)(B) (allowing
 class statutory damages of up to 1% of a defendant's net
 11 worth). Accordingly, the Court **grants** Plaintiff's request;
 before the parties' December 7-8, 2010 deposition, Midland
 shall either 1) answer Interrogatories 1-2 and Requests for
 12 Production 1-25 or 2) stipulate to its net worth.

13 (ECF No. [205](#).)

14 The Gray-Suttell Defendants ask the Court to honor the parties'
 15 stipulation that the Gray-Suttell Defendants need not provide net worth
 discovery until the Court certifies a class – a stipulation that had been
 16 communicated to, but overlooked by, the Court. Plaintiff did not
 17 respond.¹ Indeed, the parties' August 11, 2010 Joint Certificate of
 18 Counsel Regarding Continuance of Trial Date and Modification of
 19 Scheduling Order (ECF No. [90](#)) provided:
 20

21 In the event the trial date is continued and a new scheduling
 22 order entered (as requested by the parties), Plaintiff would
 propose that **Suttell defendants be required to fully respond**
to the "net worth" written discovery within thirty (30) days
following the Court's Order certifying a class. The Plaintiff
 23 requests that the Court then allow sixty (60) days from the
 receipt of those responses for the Plaintiff to serve (and
 24 email to the Court) the net worth expert report. Plaintiff
 25

26 ¹ The Court may construe Plaintiff's failure to respond as their
 consent to entry of an adverse order. LR 7.1(e).

would then agree that the pending Motion to Compel the Suttell Defendants' Responses regarding Net Worth is mute [sic], should be stricken with permission to re-file if the above is not timely accomplished.

(ECF No. 90) (emphasis added). Counsel for the Gray-Suttell Defendants also advised the Court that the parties had so stipulated during oral argument and in briefing on Plaintiff's motions to compel. (ECF No. 139.)

Based upon the parties' stipulation, **IT IS ORDERED:**

1. The Gray-Suttell Defendants' Motion to Reconsider and/or Clarify Ruling Concerning Net Worth Discovery (**ECF No. 213**) is **GRANTED**.

2. The Court's Order Granting and Denying in Part Plaintiff's Motions to Compel and Setting Status Conference (ECF No. 205) shall be amended to:

a. provide that the Gray-Suttell Defendants need not answer Plaintiff's net worth discovery requests unless and until such time as the Court certifies the class.

b. strike the following language from Page 19, Paragraph E: "Accordingly, the Court **grants** Plaintiff's request; before the parties' December 7-8, 2010 deposition, Midland shall either 1) answer Interrogatories 1-2 and Requests for Production 1-25 or 2) stipulate to its net worth." An amended order will follow.

IT IS SO ORDERED. The District Court Executive is directed to enter this Order and distribute copies to counsel.

DATED this 2nd day of March 2011.

s/Edward F. Shea

EDWARD F. SHEA

United States District Judge

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